

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for use of the Clerk of the Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

FIERMAN PRODUCE EXCHANGE INC.

## DEFENDANTS

WATERMELONS PLUS, INC., WATERMELONS II, INC. and DANNY PAGANO

ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

**KREINCES & ROSENBERG, P.C.**  
**900 MERCHANTS CONCOURSE**  
**WESTBURY, NEW YORK 11590**  
**(516) 227-6500**

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Action pursuant to the Perishable Agricultural Commodities Act 7 USC §499 (e)(c) for the enforcement of trust benefits.

Has this or a similar case been previously filed in SDNY at anytime? No ☒ Yes ☐ Judge Previously Assigned \_\_\_\_\_If yes, was this case Vol. ☐ Invol. ☐ Dismissed, No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [X] IN ONE BOX ONLY)

## NATURE OF SUIT

CONTRACT	TORTS		ACTIONS UNDER STATUTES		
<input type="checkbox"/> 110 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 130 MILLER ACT <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT <input type="checkbox"/> 151 MEDICARE ACT <input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS) <input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS <input type="checkbox"/> 160 STOCKHOLDERS' SUITS <input type="checkbox"/> 190 OTHER CONTRACT <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY <input type="checkbox"/> 340 MARINE <input type="checkbox"/> 345 MARINE PRODUCT LIABILITY <input type="checkbox"/> 350 MOTOR VEHICLE <input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PERSONAL INJURY  <b>ACTIONS UNDER STATUTES</b>  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 VOTING <input type="checkbox"/> 442 EMPLOYMENT <input type="checkbox"/> 443 HOUSING/ ACCOMMODATIONS <input type="checkbox"/> 444 WELFARE <input type="checkbox"/> 440 OTHER CIVIL RIGHTS	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 PERSONAL INJURY MED MALPRACTICE <input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY <input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 OTHER FRAUD <input type="checkbox"/> 371 TRUTH IN LENDING <input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE <input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY  <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE <input type="checkbox"/> 530 HABEAS CORPUS <input type="checkbox"/> 535 DEATH PENALTY <input type="checkbox"/> 540 MANDAMUS & OTHER <input type="checkbox"/> 550 CIVIL RIGHTS	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 AGRICULTURE <input type="checkbox"/> 620 FOOD & DRUG <input type="checkbox"/> 625 DRUG RELATED SEIZURE OP <b>PROPERTY</b> <input type="checkbox"/> 21 USC 881 <input type="checkbox"/> 630 LIQUOR LAWS <input type="checkbox"/> 640 R.R. & TRUCK <input type="checkbox"/> 650 AIRLINE REGS <input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH <input type="checkbox"/> 690 OTHER  <b>LABOR</b> <input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT <input type="checkbox"/> 720 LABOR/MGMT. RELATIONS <input type="checkbox"/> 730 LABOR/MGMT. DISCLOSURE ACT <input type="checkbox"/> 740 RAILWAY LABOR ACT <input type="checkbox"/> 790 OTHER LABOR LITIGATION <input type="checkbox"/> 791 EMPL. RET. INC. SECURITY ACT	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 APPEAL 28 USC 158 <input type="checkbox"/> 423 WITHDRAWAL 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 COPYRIGHTS <input type="checkbox"/> 830 PATENT <input type="checkbox"/> 840 TRADEMARK  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 MIA (1395FF) <input type="checkbox"/> 862 BLACK LUNG (923) <input type="checkbox"/> 863 DIWC(405(g)) <input type="checkbox"/> 863 DIWW(405(g)) <input type="checkbox"/> 864 SSID TITLE REPORTING <input type="checkbox"/> 865 RSI(405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 TAXES <input type="checkbox"/> 871 IRS-THIRD PARTY 20 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 STATE REAPPORTIONMENT <input type="checkbox"/> 410 ANTITRUST <input type="checkbox"/> 430 BANKS & BANKING <input type="checkbox"/> 450 COMMERCE/ICC RATES/ETC. <input type="checkbox"/> 460 DEPORTATION <input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO) <input type="checkbox"/> 810 SELECTIVE SERVICE <input type="checkbox"/> 850 SECURITIES/ COMMODITIES/ EXCHANGE <input type="checkbox"/> 875 CUSTOMER CHALLENGE 12 USC 3410 <input checked="" type="checkbox"/> 891 AGRICULTURE ACTS <input type="checkbox"/> 892 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 893 ENVIRONMENTAL XVI MATTERS <input type="checkbox"/> 894 ENERGY ALLOCATION ACT <input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT <input type="checkbox"/> 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE <input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES <input type="checkbox"/> 890 OTHER STATUTORY ACTIONS
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 LAND CONDEMNATION <input type="checkbox"/> 220 FORECLOSURE <input type="checkbox"/> 230 RENT LEASE & EJECTMENT <input type="checkbox"/> 240 TORTS TO LAND <input type="checkbox"/> 246 TORT PRODUCT LIABILITY <input type="checkbox"/> 290 ALL OTHER REAL PROPERTY					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_

JUDGE: \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

JURY DEMAND: ☒ YES ☐ NO

(PLACE AN X IN ONE BOX ONLY)

Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify Dist.) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

☒ 1 U.S. PLAINTIFF☐ 2 U.S. DEFENDANT

## BASIS OF JURISDICTION

☒ 3 FEDERAL QUESTION  
(U.S. NOT A PARTY)☐ 4 DIVERSITYIF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [x] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] [ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] [ ]	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] [ ]
CITIZEN OF ANOTHER STATE	[ ] [ ]	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] [ ]	FOREIGN NATION	[ ] [ ]

PLAINTIFF'S ADDRESS AND COUNTY (Calendar Rule 4(A))

PIERMAN PRODUCE EXCHANGE, INC.  
47 New York City Terminal Market  
Bronx, New York 10474

DEFENDANT'S ADDRESS AND COUNTY (Calendar Rule 4(A))

WATERMELONS PLUS, INC.  
99 Brooklyn Terminal Market  
Brooklyn, New York 11236

DANNY PAGANO  
WATERMELONS PLUS, INC.  
99 Brooklyn Terminal Market  
Brooklyn, New York 11236

WATERMELONS II, INC.  
97 Brooklyn Terminal Market  
Brooklyn, New York 11236

DEFENDANT'S ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE CLASSIFIED:

☐ Expedited ☒ Standard ☐ Complex ☐ Unknown

Check one: THIS ACTION SHOULD BE ASSIGNED TO:

☐ WHITE PLAINS ☒ FOLEY SQUARE

(DO NOT check either box if this is a PRISONER PETITION.)

DATE:  
April 5, 2007SIGNATURE OF ATTORNEY OF RECORD  
/s/ LEONARD KREINCES, ESQ.

ADMITTED TO PRACTICE IN THIS DISTRICT  
[ ] NO  
[x] YES (DATE ADMITTED Mo \_6\_ Yr \_60\_)  
Attorney Bar Code # LK-6524

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

James M. Parkison, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

# United States District Court

Southern District of New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FIERMAN PRODUCE EXCHANGE, INC.,

Plaintiff,

-against-

## SUMMONS IN A CIVIL ACTION

Case No.:

WATERMELONS PLUS, INC., WATERMELONS  
II, INC. and DANNY PAGANO,

Defendants.

07 CV 2001

JUDGE OWEN

TO: (Name and Address of Defendant)  
WATERMELON PLUS, INC.  
99 Brooklyn Terminal Market  
Brooklyn, New York 11236

DANNY PAGANO  
97 Brooklyn Terminal Market  
Brooklyn, New York 11236

WATERMELON II, INC.  
97 Brooklyn Terminal Market  
Brooklyn, New York 11236

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court  
and serve upon

PLAINTIFFS' ATTORNEYS: (name and address)  
**KREINCES & ROSENBERG, P.C.**  
900 Merchants Concourse  
Westbury, New York 11590  
(516) 227-6500

an answer to the complaint which is herewith served upon you, within **twenty (20)** days after service of this  
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against  
you for the relief demanded in the complaint.

**J. MICHAEL McMAHON**

CLERK

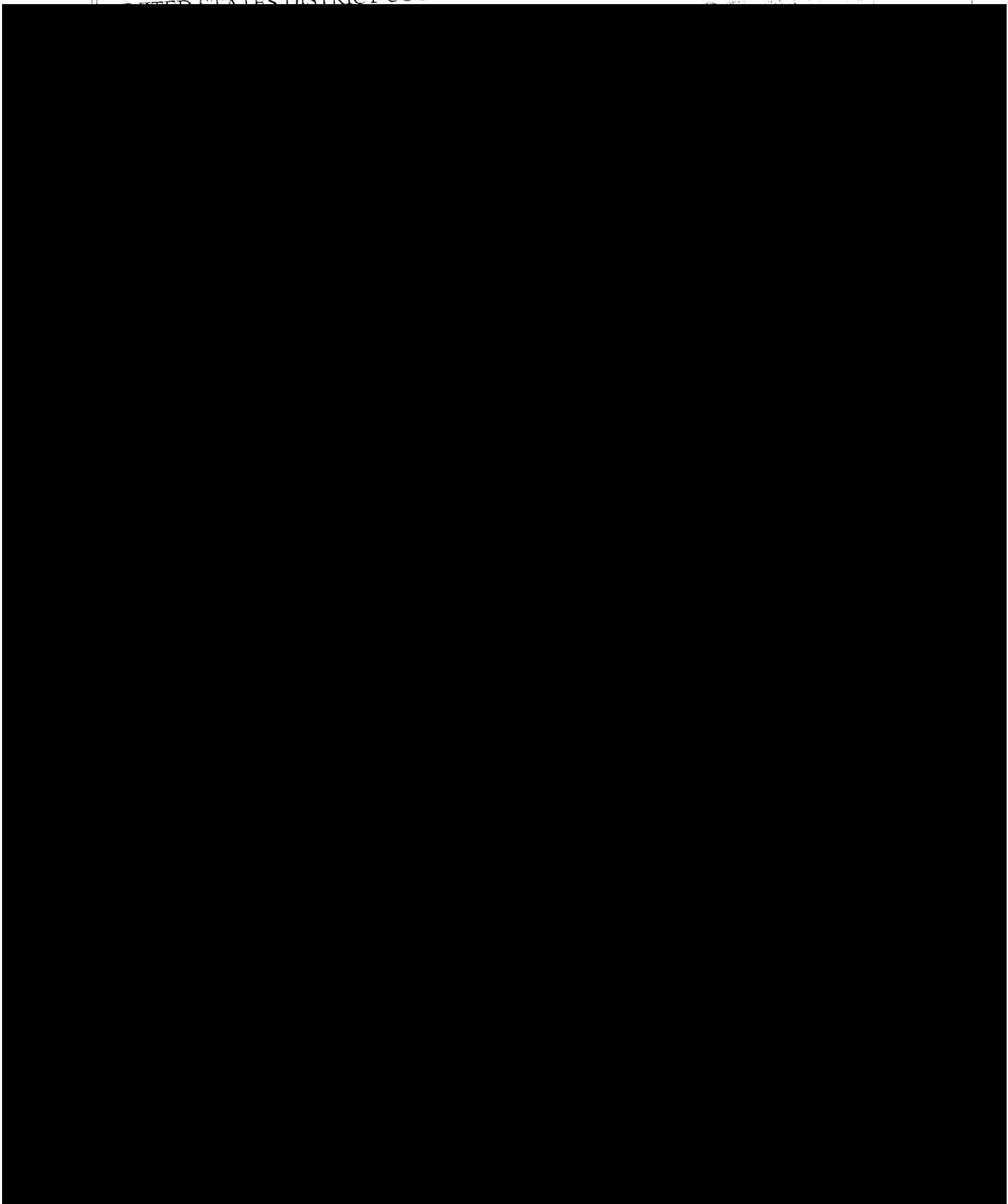
BY DEPUTY CLERK

APR 12 2007

DATE

07 CV 2927

UNITED STATES DISTRICT COURT



Brooklyn Terminal Market, Brooklyn, New York, and was at all times pertinent herein, a dealer and commission merchant and subject to and licensed under the provisions of the PACA as a dealer and commission merchant.

5. Defendant, WATERMELONS II, INC. ("WATERMELONS II"), upon information and belief, is a corporation with a principal place at 97 Brooklyn Terminal Market, Brooklyn, New York, and was at all times pertinent herein, a dealer and commission merchant and subject to and licensed under the provisions of the PACA as a dealer and commission merchant.

6. The defendant, DANNY PAGANO ("PAGANO"), is a principal officer, director and shareholder of WATERMELONS PLUS and was the conscious moving force concerning the operations of that corporation.

7. The defendant, PAGANO, directed all of the activities and operations of WATERMELONS PLUS.

8. The defendant, PAGANO, is a principal officer, director and shareholder of WATERMELONS II and was the conscious moving force concerning the operations of that corporation.

9. The defendant, PAGANO, directed all of the activities and operations of WATERMELONS II.

10. At all times hereinafter mentioned, the defendants, WATERMELONS PLUS and

WATERMELONS II, were dealers and commissioned merchants and subject to and licensed under the provisions of the PACA as a dealer and commissioned merchant.

### **GENERAL ALLEGATIONS**

11. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. §499e©).

12. FIERMAN sold and delivered to defendant, WATERMELONS PLUS, in interstate commerce, \$54,665.87 worth of wholesale quantities of produce.

13. FIERMAN sold and delivered to defendant, WATERMELONS II, in interstate commerce, \$35,381.00 worth of wholesale quantities of produce.

14. Defendant, WATERMELONS PLUS, has failed to pay for the produce when payment was due, despite repeated demands and presently owe plaintiff \$54,665.87.

15. Defendant, WATERMELONS II, has failed to pay for the produce when payment was due, despite repeated demands and presently owe plaintiff \$35,381.00.

16. At the time of receipt of the produce, plaintiff became a beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce-related assets, including all funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of each defendant since the creation of the trust.

17. Plaintiff preserved its interest in the PACA trust in the amount of \$54,665.87 and remains a beneficiary until full payment is made for the produce.

18. Plaintiff preserved its interest in the PACA trust in the amount of \$35,381.00 and

remains a beneficiary until full payment is made for the produce.

19. The defendants are experiencing severe cash flow problems and are unable to pay plaintiff for the produce plaintiff supplied.

20. The defendants' failure and inability to pay show that defendants are failing to maintain sufficient assets in the statutory trust to pay plaintiff and are dissipating trust assets.

**COUNT 1 AGAINST WATERMELONS PLUS  
(FAILURE TO PAY TRUST FUNDS)**

21. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 18 above as if fully set forth herein.

22. The failure of defendant to make payment to plaintiff of trust funds in the amount of \$54,665.87 from the statutory trust is a violation of the PACA and PACA regulations, and is unlawful.

WHEREFORE, plaintiff requests an order enforcing payment from the trust by requiring immediate payment of \$54,665.87 to plaintiff.

**COUNT 2 AGAINST WATERMELONS II  
(FAILURE TO PAY TRUST FUNDS)**

23. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 20 above as if fully set forth herein.

24. The failure of defendant to make payment to plaintiff of trust funds in the amount of \$35,381.00 from the statutory trust is a violation of the PACA and PACA regulations, and is unlawful.

WHEREFORE, plaintiff requests an order enforcing payment from the trust by requiring

immediate payment of \$35,381.00 to plaintiff.

**COUNT 3 AGAINST WATERMELONS PLUS  
(FAILURE TO PAY FOR GOODS SOLD)**

25. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 22 above as if fully set forth herein.

26. Defendant failed and refused to pay plaintiff \$54,665.87 owed to plaintiff for produce received by defendants from plaintiff.

WHEREFORE, plaintiff requests judgment in the amount of \$54,665.87 against the defendant.

**COUNT 4 AGAINST WATERMELONS II  
(FAILURE TO PAY FOR GOODS SOLD)**

27. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 24 above as if fully set forth herein.

28. Defendant failed and refused to pay plaintiff \$35,381.00 owed to plaintiff for produce received by defendants from plaintiff.

WHEREFORE, plaintiff requests judgment in the amount of \$35,381.00 against the defendant.

**COUNT 5 AGAINST WATERMELONS PLUS  
(INTEREST AND ATTORNEY'S FEES)**

29. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 26 above as if fully set forth herein.

30. As a result of defendants' failure to make full payment promptly of \$54,665.87, plaintiff has lost the use of said money.



31. As a further result of defendant's failure to make full payment promptly of \$54,665.87, plaintiff, has been required to pay attorney's 'fees and costs in order to bring this action to require defendant to comply with their statutory duties.

**COUNT 6 AGAINST WATERMELONS II  
(INTEREST AND ATTORNEY'S FEES)**

32. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 29 above as if fully set forth herein.

33. As a result of defendants' failure to make full payment promptly of \$35,381.00, plaintiff has lost the use of said money.

34. As a further result of defendant's failure to make full payment promptly of \$35,381.00, plaintiff, has been required to pay attorney's 'fees and costs in order to bring this action to require defendant to comply with their statutory duties.

**COUNT 7 AGAINST PAGANO  
(FAILURE TO PAY TRUST FUNDS)**

35. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 34 above as if fully set forth herein.

36. The defendant, PAGANO, is personally responsible to pay all sums due to the plaintiff.

WHEREFORE, plaintiff requests judgment against each of the defendants for prejudgment interest, costs and attorneys fees.

Dated this 5th day of April, 2007.

Respectfully submitted,

KREINCES & ROSENBERG, P.C.

By: 

LEONARD KREINCES (LK/6524)

Attorneys for Plaintiff

900 Merchants Concourse, Suite 305

Westbury, New York 11590

(516) 227-6500

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07 CV 2927  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FIERMAN PRODUCE EXCHANGE, INC.,

Plaintiff,

-against-

WATERMELONS PLUS, INC., WATERMELONS II,  
INC. and DANNY PAGANO,

Defendants.

JUDGE OWEN

CASE NUMBER: 07 CV 2927  
APR 12 2007  
CLERK OF COURT

Pursuant to Rule 7 of the Local Rules of the U.S. District Court for the Southern and Eastern Districts of New York and to enable Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for **Plaintiff** (A private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said party which are publicly held.

NONE

Date: Westbury, New York  
April 5, 2007

KREINCES & ROSENBERG, P.C.

By: 

LEONARD KREINCES (LK/6524)  
Attorneys for Plaintiff  
900 Merchants Concourse, Suite 305  
Westbury, New York 11590  
(516) 227-6500